



## European Commission Policies Deny Abortions to Girls and Women Impregnated by War Rape: A Call for Change

**The refusal to provide abortion services represents a violation of one of the principles of international humanitarian law, which covers non-discrimination with respect to the provision of medical services to victims. Such discrimination, which adds a terrible injustice to women who have been the victims of sexual violence, must be brought to an end.**

*-Ambassador of France to the UN, Gérard Araud, at Security Council Open Debate on conflict-related sexual violence (April 2014)*

The lives of girls and women are routinely endangered by mass rape every day in nearly every war zone. **Impregnated rape survivors are again endangered by being routinely denied abortions in EU-funded medical facilities.**

This is because the European Commission's policy is that national abortion laws, **not** the Geneva Conventions, provide the appropriate standard of medical care for women, civilians and servicewomen alike, impregnated by war rape. They are the only category of persons "wounded and sick" in armed conflict being deliberately denied a critical medical treatment in humanitarian medical settings. This policy legitimizes forced childbearing as an appropriate medical outcome for war rape survivors, and is hugely influential given that the European Union (EU), through the European Commission, is the world's second largest donor of humanitarian aid.<sup>1</sup>

It is urgent that **EU Member States, the European Parliament** and the Council for the European Union immediately adopt a new EU policy affirming the primacy of the Geneva Conventions in situations of armed conflict for **all** victims of war and end the discriminatory treatment of women war rape victims. The Commission's humanitarian aid policies must support the rights of rape survivors to comprehensive and non-discriminatory medical care as required by their condition, including life- and health-saving abortions, under common Article 3 of the Geneva Conventions.

### **I. The Commission's Explanation of their Position on Abortion and the Geneva Conventions**

The Commission's position is that, as a "needs-based and non-discriminatory donor," it provides "the same type of care to rape victims in armed conflict as to any other victims of rape in any other emergency context."<sup>2</sup> This "one policy fits all" approach—laudable though its explicit dedication to "non-discrimination"—**in fact discriminates against women raped in war by relegating their care to national laws rather than IHL.**

The rationale for this position, as articulated by the Director-General of ECHO,<sup>3</sup> is since "[n]either international humanitarian law nor international human rights law explicitly refer to abortion rights . . . the legal primacy of international frameworks on this issue is not clear. Even if international humanitarian law were to give unequivocal rights in this field (which does not currently appear to be the case), in many countries this law is only enforceable if integrated into domestic law."<sup>4</sup> This is consistent with the

position articulated by ECHO Commissioner Georgieva in response to parliamentary questions in the European Parliament.<sup>5</sup>

## **II. The Commission's Abortion Policy Conflicts with the Rights of Female War Victims under International Humanitarian Law**

All EU Member States have binding obligations under the Geneva Conventions, their Additional Protocols, and customary international law, including in the provision of humanitarian aid. This includes the obligation to “respect” and “ensure respect” for the Geneva Conventions **in all circumstances**.

Fundamental to the Geneva Conventions is the mandate that all persons “wounded and sick” in armed conflict be provided all necessary medical care as required by their medical condition and without adverse distinction based on sex.<sup>6</sup> Further, the Conventions, recognizing that the medical needs of men and women may differ based on biological differences, provides that women “shall in all cases, benefit by [medical] treatment as favourable as that granted to men.”<sup>7</sup> This means that the “outcome for each gender must be the same, not that the treatment must be identical.”<sup>8</sup> Furthermore, in times of armed conflict, IHL governs and trumps any contrary national laws.<sup>9</sup>

**Thus, the denial of abortion to women raped is “not only a violation of their right to medical care, but also a violation of the prohibition on ‘adverse distinction’ found in common Article 3, the Additional Protocols to the Geneva Conventions and customary international law.”<sup>10</sup>**

The contrast between the Commission's policy and what international humanitarian law (IHL) requires is illustrated by the UK's policy: “[i]n conflict situations where denial of abortion in accordance with a national law prohibition would threaten the woman's or girl's life or cause unbearable suffering, international humanitarian law principles may justify offering an abortion rather than perpetuating what amounts to inhumane treatment in the form of an act of cruel treatment or torture.”<sup>11</sup> The Netherlands affirms that “it is a humanitarian law duty to provide medical care, including abortion of victims of rape, if and when there is a medical necessity for this regardless of national laws in countries.”<sup>12</sup> Likewise, France has made clear that refusing to provide abortions for women raped in war violates IHL.<sup>13</sup>

The Commission's policy conflicts the obligations of EU Member States under IHL and UN Security Council Resolutions 2106 and 2122.<sup>14</sup> Resolution 2122, which was adopted unanimously in October 2013 and co-sponsored by 24 EU member states,<sup>15</sup> includes the call for UN Member States to:

“[E]nsure [that] humanitarian aid and funding includes provision for the full range of medical, legal, psychosocial and livelihood services to women affected by armed conflict and post-conflict situations, and noting the need for access to the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination.”<sup>16</sup>

This provision is understood to require access to safe abortion services for female war rape victims<sup>17</sup> and directly responds to the Secretary-General's recommendation to the Council in September 2013 that girls and women raped in armed conflict be ensured access to “services for safe termination of

pregnancies resulting from rape, without discrimination and in accordance with international human rights and humanitarian law.”<sup>18</sup>

### **III. How to Ensure EU Humanitarian Aid Supports Abortion Access for War Rape Survivors**

The Commission’s authority to distribute EU humanitarian aid comes from a binding regulation passed by Council of the European Union in 1996, which sets forth restrictions on how aid is to be distributed, including that it be in compliance with international agreements, including IHL.<sup>19</sup> The EU parliament has the duty to act in the face of the Commission’s failure to comply with fundamental laws, including IHL and Security Council Resolutions. Therefore the Council, the EU Parliament, and member states must act to ensure that EU humanitarian aid is disbursed in accord with the rights of women war victims under IHL. Three interrelated policy changes are needed.

#### **1. Adopt an EU Policy on Abortion and the Geneva Conventions**

A clear EU policy on abortion and the Geneva Conventions must be adopted and applied to all EU humanitarian aid. The EU must affirm the rights of female war rape survivors, civilian or combatant, under the Geneva Conventions to comprehensive and non-discriminatory medical care, including safe abortions, and make explicit that where IHL governs, restrictive national abortion laws are not applicable. The EU should commit to upholding the IHL protections for doctors and medical workers treating war victims, including their immunity from prosecution under any national restrictive laws.<sup>20</sup>

#### **2. Differentiate Humanitarian Aid for Victims of Armed Conflict from that for Victims in Non-conflict Emergencies**

The Commission applies a single humanitarian aid policy to victims of conflict and victims of non-conflict and requires some 200 EU partners to comply with national laws in all circumstances. This violates the Council of European Unions’ mandate, that the Commission must ensure that its aid to “victims of fighting” is distinguished from other aid and delivered in accord with victims’ rights under IHL.<sup>21</sup> In fact, the Council added the phrase “in accordance with current international agreements” (which include the Geneva Conventions) to the Commission’s proposed language on humanitarian aid to war victims, which contained no reference to these rights.<sup>22</sup>

The Commission’s “one policy fits all” also violates the EU guidelines on promoting compliance with IHL.<sup>23</sup> The guidelines, updated in 2009, call for all EU bodies including the Commission to identify all situations under their various mandates “where IHL may apply . . . without delay,”<sup>24</sup> to ensure IHL compliance.<sup>25</sup>

#### **3. Ensure that EU Humanitarian Aid is Kept Separate from US Humanitarian Aid, which Contains an Abortion Ban**

In order to ensure that an EU policy requiring abortion access and compliance with the Geneva Conventions for war rape victims is effective on the ground, EU humanitarian aid must be kept separate from US humanitarian aid, which contains a ban on abortion.<sup>26</sup> This is because nearly all EU partners receive humanitarian aid from both the US and EU, and without segregation, the US abortion

ban contaminates the full scope of the partner organization's activities.<sup>27</sup> The European Parliament has twice called for EU humanitarian aid to be segregated from that provided by the US, so long as US abortion restrictions remain in place in order to ensure abortions for women raped in war.<sup>28</sup>

## Conclusion

The EU must treat women victims of war rape equally with all other persons “wounded and sick” in armed conflict. EU humanitarian aid should be in accordance with Member States' obligations under the Geneva Conventions, their Additional Protocols, and customary international law. Together the EU and EU member states provide over half of the world's aid.

### **Even without the US changing its anti-abortion policy, the EU can shift existing practices and save women's lives.**

<sup>1</sup> See Global Humanitarian Assistance, EU Institutions, <http://www.globalhumanitarianassistance.org/countryprofile/eu-institutions>.

<sup>2</sup> Letter from Claus Sørensen, Director-General DG ECHO, to Global Justice Center (20 Dec. 2012).

<sup>3</sup> ABOUT ECHO, Commission's European Humanitarian Office, [http://ec.europa.eu/echo/about/presentation\\_en.htm](http://ec.europa.eu/echo/about/presentation_en.htm); See also European Union – Frequently Asked Questions, [http://europa.eu/rapid/press-release\\_MEMO-07-238\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-07-238_en.htm?locale=en).

<sup>4</sup> Letter from Claus Sørensen, *supra* note 2.

<sup>5</sup> Answer to Question for Written Answer to the European Commission (Rule 117), Eur. Parl. Doc. E-005386/2012 (17 Jul. 2012).

<sup>6</sup> See Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts [hereinafter “Protocol I”], (1979) 1125 UNTS 3, Art. 10; Additional Protocol (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts [hereinafter “Protocol II”], (1979) 1125 UNTS 609, Art. 7.

<sup>7</sup> Geneva Convention (III) Relative to the Treatment of Prisoners of War, (1950) 75 UNTS 135, Art 14.

<sup>8</sup> Letter from Professor Louise Doswald Beck (former Legal Advisor to the International Committee of the Red Cross), to President Barack Obama (10 Apr. 2013), available at [http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=321&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=321&cf_id=34).

<sup>9</sup> See UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (1 July 2004), ¶ 15.4.; Memorandum, Deputy U.S. Secretary of Defense to Secretaries of the Military Departments, Subj: Application of Common Article 3 of the Geneva Conventions to the Treatment of Detainees in the Department of Defense (7 July 2006); ICRC, *Professional Standards for Protection Work: Carried Out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence* at 41 (Oct. 2009) (“pending such changes [to bring national law into conformity with international law] protection actors should nevertheless be prepared to point out that domestic law cannot be used as an excuse for non-compliance with international obligations”).

<sup>10</sup> Letter from Professor Louise Doswald Beck (former Legal Advisor to the International Committee of the Red Cross), to President Barack Obama (10 Apr. 2013), available at [http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=321&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=321&cf_id=34).

<sup>11</sup> United Kingdom Parliament, Question Asked by Baroness Tonge regarding Armed Conflict and Rape – Answered by Baroness Northover, HL Deb, c153W (13 Feb. 2013).

<sup>12</sup> Answer to Question for Written Answer from Parliament Member Sjoerdsma, by Frans Timmermans, Minister of Foreign Affairs and Liliaane Ploumen, Minister of Foreign Trade and Development Aid (8 Mar. 2013), available at: <http://globaljusticecenter.net/index.php/news-and-events/news/press-releases/319-netherlands-affirms-right-of-women-raped-in-armed-conflict-to-abortions-as-part-of-necessary-medical-care-under-international-law>. See also Security Council, 6984th meeting, U.N. Doc. S/PV.6984 (24 June 2013), at 48.

<sup>13</sup> See Security Council, 7160th meeting, U.N. Doc. S/PV.7160 (25 Apr. 2014), at 15.

<sup>14</sup> See UN Security Council Resolution 2106, U.N. Doc. S/RES/2106 (2013); UN Security Council Resolution 2122, U.N. Doc S/RES/2122 (2013).

<sup>15</sup> Security Council, 7044th meeting, U.N. Doc. S/PV.7044 (18 Oct. 2013), at 2. While only 4 EU member states did not co-sponsor the resolution, they still expressed support. See Statement by Mr. Donaghue, Permanent Mission of Ireland to the United Nations, *Id.* at 47; Statement by Mr. Logar, Permanent Mission of Slovenia to the United Nations, *Id.* at 45.

<sup>16</sup> UN Security Council Resolution 2122, *supra* note 13, Preamble.

<sup>17</sup> Aisling Swaine, Substantive New Normative Provisions on Women and Armed Conflict Concurrently Adopted by the United Nations Security Council and the CEDAW Committee, 18:5 ASIL INSIGHTS, (18 Feb. 2014), <http://www.asil.org/insights/volume/18/issue/5/substantive-new-normative-provisions-women-and-armed-conflict>.

<sup>18</sup> Report of the Secretary-General on women and peace and security, U.N. Doc. S/2013/525 (4 Sept. 2013), at ¶¶ 72(a).

<sup>19</sup> Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid – Official Journal L 163, 02/07/1996 P. 0001-0006.

<sup>20</sup> Protocol I, *supra* note 6, Art. 16(1) (“Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.”); Protocol II, *supra* note 6, Art. 10(1); ICRC, Customary International Humanitarian Law Database, *Rule 26. Medical Activities*, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule26](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule26).

<sup>21</sup> Council Regulation (EC) No 1257/96, *supra* note 18. Regulations, such as this one, are binding: they “are the most direct form of EU law - as soon as they are passed, they have binding legal force throughout every Member State . . .” See European Commission, *What are EU Regulations?*, [http://ec.europa.eu/eu\\_law/introduction/what\\_regulation\\_en.htm](http://ec.europa.eu/eu_law/introduction/what_regulation_en.htm).

<sup>22</sup> *Id.* at Article 2(g); see Proposal for a Council Regulation (EC) concerning Humanitarian Aid, Brussels, 31.05.1995, COM (95) 201 final.

<sup>23</sup> Speech by Kristalina Georgieva, EU Commissioner for International Cooperation, Humanitarian Aid and Crisis Response, “The European Union at the Front of Protecting International Humanitarian Law,” given at Palais D’Egmont, Brussels (29 Jan. 2014).

<sup>24</sup> Updated European Union guidelines on promoting compliance with IHL (2009/C 303/06), Section III, ¶¶ 15(a).

<sup>25</sup> The Guidelines further require EU bodies to “recommend action to promote compliance with IHL in accordance with these Guidelines.” *Id.*

<sup>26</sup> Global Justice Center, Q&A: How President Obama Can – and Must – Save the Lives of Girls & Women Raped in War By Lifting the Abortion Ban Attached to US Humanitarian Aid (Jun. 2014), available at [http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=413&cf\\_id=34](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=413&cf_id=34).

<sup>27</sup> The World Health Organization (“WHO”) is the only United Nations entity that segregates out US funding from EU and other donors in order to preserve the integrity and independence of its abortion related research. See WHO, *Voluntary contributions by fund and by donor for the financial period 2010–2011* (April 5, 2012).

<sup>28</sup> European Parliament resolution of 13 March 2012 on equality between women and men in the European Union – 2011, ¶¶ 61; European Parliament resolution of 13 June 2013 on the Millennium Development Goals – defining the post-2015 framework, ¶¶ 31.



*The Global Justice Center works to achieve sustainable justice, peace and security by building a global rule of law based on gender equality and universally enforced international human rights laws.*

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